IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6177 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT FISHERIES CENTRAL COOPASS LTD - Petitioner(s)

Versus

RAJESH PURSHOTTAMBHAI PARMAR - Respondent(s)

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Appearance :

MR SIRAJ R GORI for Petitioner No(s).: 1.

MR SUBRAMANIAM IYER for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 23/06/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 1st September, 1999 passed by the Labour Court, Vadodara, in Reference [LCV] No. 380 of 1989, whereby, the Labour Court

has directed the petitioner to reinstate the respondent workman in service with full back wages.

2. The short facts of the case are that the respondent workman was working on a temporary basis as a Fish Cutter. Since the petitioner Unit was making huge loss, on 08.06.1988 the petitioner decided to close down its unit and suspend all its business in the city. Accordingly, the services of the respondent workman came to be discontinued.

2.1. On being discontinued from the service, the respondent workman raised an industrial dispute, which was ultimately referred to the Labour Court for adjudication. The Labour Court after considering the case on merits, allowed the Reference with the aforesaid directions. Hence, this petition.

3. Mr. Gori learned advocate for the petitioner Unit has submitted that the Labour Court has committed error in granting reinstatement with full back wages inasmuch as the Labour Court has not taken into consideration the fact that the respondent workman was a temporary employee and that since the petitioner Unit was suffering huge losses it had closed down the said unit. Therefore, the petitioner Unit was not in a position to continue the respondent workman in service. Thus, on these grounds, the impugned order is required to be quashed and set aside.

4. Mr. Iyer learned advocate for the respondent – workman has submitted that the petitioner Unit has terminated the services of the respondent without following the provisions

of Section 25-F of the I.D. Act, 1947 and, therefore, the Labour Court was justified in granting reinstatement with full back wages. Mr. Iyer has further submitted that in view of the modification of the interim relief by this Court, the respondent workman was reinstated in service.

5. I have heard the learned advocates for the respective parties. Having perused the materials produced on record, it appears that the Labour Court, while granting reinstatement in service, has recorded a finding that the petitioner has terminated the respondent workman from service without following the provisions of Section 25-F of the I.D. Act. Thus, I am of the opinion that the Labour Court was justified in granting reinstatement in service. Apart from that, the impugned award of the Labour Court which was stayed by this Court vide order dated 3/7/2000, has been modified vide order dated 13.12.2000, and the respondent workman has been reinstated in service. Thus, there is no dispute with regard to reinstatement in service. However, so far as the direction with regard to back wages is concerned, I am of the opinion that the Labour Court has committed an error in granting back wages to the respondent since the respondent workman was a temporary employee and was terminated from the service on closure of the Unit.

6. For the foregoing reasons, the petition is partly allowed. The impugned order qua reinstatement in service is confirmed and qua granting of back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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